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Attorneys for the Federal Defendants

**THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

ROHNERT PARK CITIZENS TO ENFORCE
 CEQA, and DOES 1 through 5, inclusive

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
 TRANSPORTATION, UNITED STATES
 DEPARTMENT OF TRANSPORTATION,
 FEDERAL HIGHWAY ADMINISTRATION,
 and DOES 6 through 10, inclusive,

Defendants.

Civil No. 07-04607 THE

**ANSWER OF THE
 FEDERAL DEFENDANTS**

United States Department of Transportation, and the Federal Highway Administration
 (“FHWA”) (also collectively referred to herein as the “United States” or “Federal Defendants”)
 hereby answer and assert affirmative defenses to the claims and allegations contained in the
 numbered paragraphs of the Complaint for Declaratory, Mandamus, and Injunctive Relief for
 Violations of the National Environmental Policy Act, Administrative Procedure Act, the
 California Environmental Quality Act, and the California Public Records Act (hereinafter,
 “Plaintiffs’ Complaint” or “Complaint”).

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INTRODUCTION

1. In response to the allegations set forth in the first paragraph of numbered paragraph 1 of Plaintiffs' Complaint¹, Federal Defendants aver that allegations in the first sentence constitute Plaintiffs' characterization of their case, to which no response is required. Federal Defendants admit the factual allegations of the second sentence of the same paragraph. The remaining allegations of numbered paragraph 1 are characterizations of plaintiffs' case to which no response is required. To the extent any part of this paragraph is not specifically admitted, and an answer is deemed necessary, it is denied.

JURISDICTION AND VENUE

2. The jurisdictional allegations of paragraph 2 are conclusions of law to which no response is required. To the extent this paragraph is deemed to contain any statement of fact, it is denied.

3. The venue allegations of paragraph 3 are conclusions of law to which no response is required. To the extent this paragraph is deemed to contain any statement of fact, it is denied.

4. The jurisdictional allegations of paragraph 4 are conclusions of law to which no response is required. To the extent this paragraph is deemed to contain any statement of fact, it is denied.

PARTIES

5. Federal Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 5 concerning plaintiff Rohnert Park Citizens to Enforce CEQA and on that basis deny the allegations.

6. The factual allegations of paragraph 6 are denied. Any remaining allegations are conclusions of law and require no response. To the extent the remaining allegations are deemed to contain any statement of fact, they are denied.

7. The factual allegations of paragraph 7 are admitted.

¹ Although the introductory numbered paragraph of Plaintiffs' Complaint contains four sub-paragraphs within, the entire paragraph is numbered "1." Defendants have conformed this Answer to plaintiffs' paragraph numbering system to avoid confusion.

1 8. The factual allegations of paragraph 8 are admitted.

2 9. Federal Defendants lack sufficient knowledge or information to admit or deny the
3 allegations of paragraph 9 concerning Does 1 through 10 and on that basis deny the allegations.

4 **PLAINTIFFS' GENERAL ALLEGATIONS**

5 10. The United States hereby fully incorporates, by this reference, its previous answers
6 to paragraphs 1 through 9 of the Complaint, inclusive, as though fully set forth herein.

7 11. Federal Defendants admit the factual allegations set forth in the first sentence of
8 paragraph 11. The remaining allegations set forth in paragraph 11 purport to characterize the
9 July 2004 joint California Department of Transportation draft Initial Study and FHWA draft
10 Environmental Assessment for the Wilfred Avenue Interchange Project ("Project"), which
11 speaks for itself and contains the best evidence of its content, and as such requires no response.
12 To the extent those remaining allegations are deemed to contain any statement of fact, they are
13 denied.

14 12. Federal Defendants admit a joint California Department of Transportation Negative
15 Declaration/Initial Study and FHWA Environmental Assessment ("June 2005 IS/EA") was
16 released to the public in June 2005. The remaining allegations set forth in paragraph 12 purport
17 to characterize the contents of the June 2005 IS/EA, which speaks for itself and contains the best
18 evidence of its content, and as such requires no response. To the extent those remaining
19 allegations are deemed to contain any statement of fact, they are denied.

20 13. Federal Defendants lack sufficient knowledge or information to admit or deny the
21 allegations of paragraph 13 and on that basis deny the allegations.

22 14. Federal Defendants admit the factual allegations in the first sentence of paragraph
23 14. The remaining allegations set forth in paragraph 14 purport to characterize the contents of
24 the FHWA Finding of No Significant Impact, which document speaks for itself and contains the
25 best evidence of its content, and as such requires no response. To the extent those remaining
26 allegations are deemed to contain any statement of fact, they are denied.

27 15. Federal Defendants lack sufficient knowledge or information to admit or deny the
28 allegations of paragraph 15 and on that basis deny the allegations.

ANSWER OF THE UNITED STATES

ROHNERT PARK CITIZENS v. CALIF DEPT OF TRANS. C 07-04607 THE

1 16. Federal Defendants lack sufficient knowledge or information to admit or deny the
2 allegations of paragraph 16 and on that basis deny the allegations.

3 17. Federal Defendants lack sufficient knowledge or information to admit or deny the
4 allegations of paragraph 17 and on that basis deny the allegations.

5 18. Federal Defendants lack sufficient knowledge or information to admit or deny the
6 allegations of paragraph 18 and on that basis deny the allegations.

7 19. Federal Defendants lack sufficient knowledge or information to admit or deny the
8 allegations of paragraph 19 and on that basis deny the allegations.

9 20. Federal Defendants lack sufficient knowledge or information to admit or deny the
10 allegations of paragraph 20 and on that basis deny the allegations.

11 21. Federal Defendants lack sufficient knowledge or information to admit or deny the
12 allegations of paragraph 21 and on that basis deny the allegations.

13 22. Federal Defendants lack sufficient knowledge or information to admit or deny the
14 allegations of paragraph 22 and on that basis deny the allegations.

15 23. Federal Defendants lack sufficient knowledge or information to admit or deny the
16 allegations of paragraph 23 and on that basis deny the allegations.

17 24. Federal Defendants lack sufficient knowledge or information to admit or deny the
18 allegations of paragraph 24 and on that basis deny the allegations.

19 25. Federal Defendants lack sufficient knowledge or information to admit or deny the
20 allegations of paragraph 25 and on that basis deny the allegations.

21 26. Federal Defendants lack sufficient knowledge or information to admit or deny the
22 allegations of paragraph 26 and on that basis deny the allegations.

23 27. Federal Defendants admit FHWA issued a Finding of No Significant Impact under
24 the National Environmental Policy Act for the Project on November 6, 2006. Except as
25 expressly admitted, the allegations of paragraph 27 are denied.

26 28. Federal Defendants lack sufficient knowledge or information to admit or deny the
27 allegations of paragraph 28 and on that basis deny the allegations.

1 29. The factual allegations of paragraph 29 are denied. Any remaining allegations are
2 conclusions of law and require no response. To the extent those remaining allegations are
3 deemed to contain any statement of fact, they are denied.

4 **PLAINTIFFS' FIRST CAUSE OF ACTION**
5 **FOR VIOLATIONS OF NEPA AND THE APA**
6 **(against the DOT and the FHWA)**

7 30. The United States hereby fully incorporates, by this reference, its previous answers
8 to paragraphs 10 through 29 of the Complaint, inclusive, as though fully set forth herein.

9 31. The allegations of paragraph 31 are a characterization of the National Environmental
10 Policy Act to which no response is required. To the extent any of the allegations are deemed to
11 contain any statement of fact, they are denied.

12 32. Federal Defendants admit the factual allegations set forth in the first sentence of
13 paragraph 32. The remaining allegations of paragraph 32 are conclusions of law and require no
14 response. To the extent any of the remaining allegations are deemed to contain any statement of
15 fact, they are denied.

16 33. The allegations of paragraph 33 are conclusions of law and require no response. To
17 the extent any of the allegations are deemed to contain any statement of fact, they are denied.

18 34. The allegations of paragraph 34 contain characterizations of the National
19 Environmental Policy Act and the Council on Environmental Quality's implementing
20 regulations, to which no response is required. To the extent any of the allegations are deemed to
21 contain any statement of fact, they are denied.

22 35. Federal Defendants admit they have not issued a Supplemental Environmental
23 Impact Statement for the project. Any remaining allegations of paragraph 35 are conclusions of
24 law to which no response is required. To the extent any of the remaining allegations are deemed
25 to contain any statement of fact, they are denied.

26 36. The allegations of paragraph 36 are conclusions of law and require no response. To
27 the extent any of the allegations are deemed to contain any statement of fact, they are denied.

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1 37. The factual allegations of paragraph 37 are denied. Any remaining allegations are
2 conclusions of law and require no response. To the extent any of the remaining allegations are
3 deemed to contain any statement of fact, they are denied.

4 **PLAINTIFFS' SECOND CAUSE OF ACTION**
5 **FOR VIOLATIONS OF CEQA**
6 **(against Caltrans)**

7 38. The United States hereby fully incorporates, by this reference, its previous answers
8 to paragraphs 30 through 37 of the Complaint, inclusive, as though fully set forth herein.

9 39. Paragraph 39 contains factual allegations and conclusions of law pertaining solely to
10 the California Department of Transportation, and as such require no response by Federal
11 Defendants. To the extent any of the factual allegations of paragraph 39 may be construed to
12 pertain to Federal Defendants and require a response, they are denied.

13 40. Paragraph 40 contains factual allegations and conclusions of law pertaining solely to
14 the California Department of Transportation, and as such require no response by Federal
15 Defendants. To the extent any of the factual allegations of paragraph 40 may be construed to
16 pertain to Federal Defendants and require a response, they are denied.

17 **PLAINTIFFS' THIRD CAUSE OF ACTION**
18 **FOR VIOLATIONS OF THE PRA**
19 **(against Caltrans)**

20 41. The United States hereby fully incorporates, by this reference, its previous answers
21 to paragraphs 37 through 40 of the Complaint, inclusive, as though fully set forth herein.

22 42. Paragraph 42 contains factual allegations and conclusions of law pertaining solely to
23 the California Department of Transportation, and as such require no response by Federal
24 Defendants. To the extent any of the factual allegations of paragraph 42 may be construed to
25 pertain to Federal Defendants and require a response, they are denied.

26 **PRAYER FOR RELIEF**

27 The remainder of Plaintiffs' complaint consists of Plaintiffs' request for relief to which
28 no response is required. To the extent a response is required, Federal Defendants deny that
Plaintiffs are entitled to the relief requested or any relief whatsoever.

GENERAL DENIAL

Unless specifically admitted herein, Defendants deny each and every allegation in Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

The United States alleges as follows:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The Court lacks jurisdiction over the plaintiffs' claims.
3. The purported claims in the Complaint, and each of them, are barred by the doctrine of sovereign immunity.
4. The Plaintiffs failed to exhaust administrative remedies before filing their Complaint.

The United States respectfully reserves the right to modify, revise, or supplement this Answer to the Complaint, and to plead such further defenses and counter-claims as may become necessary as this case develops, if any.

WHEREFORE, the United States respectfully requests that the Court:

1. Deny the plaintiffs' claims for relief and any relief, whatsoever;
2. Enter judgment in favor of the United States as to each and every claim asserted by the plaintiffs;
3. Award the United States its costs of suit and such other relief as the Court may deem just and proper.

DATED: November 14, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/

CHARLES M. O'CONNOR
Assistant United States Attorney

Attorneys for the United States

OF COUNSEL:

ANSWER OF THE UNITED STATES

ROHNERT PARK CITIZENS v. CALIF DEPT OF TRANS. C 07-04607 THE

1 Brett Gainer, Counsel
2 Federal Highway Administration
3 U.S. Department of Transportation
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